



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 9, 1996

Mr. Gary W. Smith  
City Attorney  
City of Greenville  
P.O. Box 1049  
Greenville, Texas 75403-1049

OR96-0506

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 35588.

The City of Greenville (the "city") received a request for the "complete offense report" concerning an assault. You state that the city has released some information, but that the city objects to releasing the remaining information under section 552.108 of the Government Code.

First, we note that it appears that the city created a separate document containing the information that was released as opposed to releasing the actual offense report with information redacted. It is not apparent whether the document was created to satisfy the request or was already in existence when the request for the offense report was made to the city. A governmental body must release a copy of the actual record requested with any confidential or nondisclosable information excised. Open Records Decision No. 606 (1992) at 2. The act does not permit a governmental body to provide a requestor with a new document on which only the disclosable requested information has been

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<sup>1</sup>We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142. A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

consolidated and retyped. *Id.* at 3. Furthermore, where a requestor seeks access to or copies of specific records, as in this case, the governmental body may not substitute a record which contains only the public portions of the requested records unless the requestor agrees to such a substitution. Open Records Decision No. 633 (1995) at 1 - 4.

Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 600, amended by Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 7, 1995 Tex. Sess. Law Serv. 5127, 5131. Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information which relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public). We stress, however, that it is the type of information that is determinative, not the location of the information on the literal "first page" of an offense report.

We have reviewed the information the city released and compared it with the remaining information that the city contends is excepted from disclosure. The information the city released does not contain all of the information deemed public by the *Houston Chronicle Publishing Co.* case. We have marked the information the city may withhold under section 552.108 of the Government Code. The remaining information must be released to the requestor.<sup>2</sup>

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<sup>2</sup>Although we agree that in certain circumstances the actual statement of an informant may be withheld from required public disclosure, see Open Records Decision Nos. 549 (1990) (informant's privilege), 127 (1976) (informant's statements on list of information not available to public), the description and identity of the complainant and a detailed description of the offense is public information, see Open Records Decision No. 127 (1976) (listing information available to public). The "narrative" contains the officer's rendition of the complainant's description of the offense. There is no indication in the narrative that the "witness" gave a statement to the officer.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/LBC/rho

Ref: ID# 35588

Enclosures: Marked documents

cc: Ms. Jamie C. Harris  
1919 Joe Ramsey #E-8  
Greenville, Texas 75401  
(w/o enclosures)